IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1268 OF 2004
IN
APPEAL FROM ORDER NO. 926 OF 2004

Smt.Mangal Suryakant Ghatage. ... Applicant.
Versus.
M/s.Inayat Roadlines & Co. & anr. ... Respondents.

Shri A.B.Borkar for the Applicant.

Shri R.S.Desai for the Respondent No.1.

CORAM : ABHAY S. OKA, J.

DATED : 31st January, 2005.

P.C.:

1. Rule. The learned Counsel for the Respondent No.1 waives service. Service on Respondent No.2 is dispensed with for the purpose of this Civil application.

2. The prayer in this Civil Application is for stay of the impugned Judgment and order dated 1st October 2004.

The operative part of the said order reads thus:

> 1. The R.T.O. is directed to issue permits pertaining to the disputed Trucks in the name of proper person but permits be handed over to the Plaintiffs by accepting necessary charges from the Plaintiff and after compliance of legal procedure by the Plaintiff.

2. The Defendant No.1 is restrained to cause any obstruction or disturbance to the Plaintiff while obtaining road permit pertaining to the disputed Trucks Nos.MH-09-G-7291 and MH-09-Q-6391 by herself or through any other person till disposal of the suit.

3. Accordingly, the application is allowed."

Shri Borkar the learned Counsel appearing for the Appellant submitted that there is serious dispute regarding the ownership of the trucks. He submitted that the R.T.O. is not a party to the suit and therefore, such a mandatory direction could not have been given by the trial Court. He submitted that in view of the observation made in paragraph 16 of the impugned Judgment and Order, even the Trucks will be transferred in the name of the Respondent No.1 in the records of the R.T.O. He, therefore, submitted that the impugned order deserves to be stayed. The learned Counsel for the Respondent No.1 has brought to my notice the order dated 27th November 2002 passed by the learned trial Judge in the same suit on the application at Exh.5. The operative part of the said order reads thus:

"The application Exh.5 is allowed. The Defendants are hereby restrained from obstructing the Plaintiff's possession over both the Trucks till the disposal of the suit.

. The Plaintiff is directed to furnish security in the sum of Rs.3,00,000/- for the reasons stated in the aforesaid order as a condition for the relief of injunction granted in its favour."

He submitted that for want of permit the Trucks are standing idle. He submitted that unless the trucks are plied, the value of the trucks will be diminished.

3. It is an admitted position that the Appellant has not challenged the order dated 27th November 2002. As a result, the Trucks are in the custody of the Respondent No.1 with effect from 27th November 2002. It will be in the interest of both the parties if the Trucks are beneficially used for carrying on the transport business. It is obvious that even if the permit is issued on the basis of the impugned order dated 1st October 2004, no equity or right will be created in favour of the Respondent No.1. The said permit is naturally subject to the final result of the Appeal and

subject to further orders which may be passed by this Court as well as the trial Court in the pending suit.

4. Hence it is not necessary to stay execution of the impugned order. It is however clarified that even if the permits are issued by the R.T.O. in the name of the Respondent no.1 and even if the name of Respondent No.1 is entered in the records of the R.T.O. on the basis of the impugned order, no equity or right will be created in favour of the Respondent no.1. Grant of permit and the consequential entries which are made in the record of the R.T.O. are naturally subject to the final result of the Appeal as well as the final result of the suit. The same is also subject to the orders which may be passed by this Court and the trial Court. It is obvious that if the permit is granted in favour of the Respondent No.1 the Trucks will be used for carrying on the transport business. The Respondent No.1 will submit accounts of the business in the trial Court on or before 10th of each and every calender month till disposal of the suit.

5. With the above observations and direction to the Respondent No.1 to submit accounts, the Civil Application is rejected with no order as to costs.

6. Pendency of this Appeal will not operate as stay of the proceedings of the suit in the trial Court and the trial Court will proceed with the hearing of the suit.

7. Parties to act on authenticated copy of this order.

Judge.